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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 LASALLE BANK NATIONAL  
12 ASSOCIATION,

Plaintiff,

13 vs.

14 COMAIR ROTRON, INC., THERMAFLO,  
15 INC.; and COMAIR PARENT CORP.,

16 Defendant.  
17

CASE NO. 08cv1387 DMS (POR)

**ORDER RE: RECEIVER'S SIXTH  
REPORT**

[Doc. 105]

18 On November 6, 2009, and pursuant to Court order, Joel B. Weinberg, the receiver herein  
19 ("Receiver"), filed the Receiver's Sixth Report and Petition for Instructions ("Sixth Report"). (Doc.  
20 105.) The Sixth Report is unopposed. (*See* Doc. 107.) The matter is suitable for submission without  
21 oral argument, pursuant to Local Rule 7.1(d).

22 Pursuant to Local Rule 66.1, a receiver's report must include (1) a summary of Receiver's  
23 operations; (2) an inventory of receivership assets and their appraised value; (3) a schedule of all  
24 receipts and disbursements; (4) a list of all creditors, their addresses, and claimed amounts; and (5) a  
25 petition for instructions including a recommendation as to whether the receivership should be  
26 continued. The Sixth Report provides the following:

27 *1. Defendants' Business Operations*

28 As discussed in this Court's October 9, 2008 order concerning Receiver's First Report,

1 Defendant Comair Parent Corp. is a Delaware corporation. (Doc. 38, at 2.) It owns 100 percent of the  
 2 issued and outstanding shares of Defendant Comair Rotron, Inc., which is also a Delaware corporation.  
 3 (*Id.*) Comair Rotron, Inc., and Comair Parent Corp own 99.96 percent and .04 percent, respectively,  
 4 of the shares in Comair Rotron de Mexico, S. de R.L. de C.V. (“Mexican Subsidiary”). (*Id.*)  
 5 Defendant Comair Rotron, Inc. owns 100 percent of the issued and outstanding stock of Comair  
 6 Rotron Europe, Ltd. (“UK Subsidiary”), Electronic Systems Cooling, Inc., and Defendant ThermaFlo,  
 7 Inc. (*Id.* at 2-3.) The UK Subsidiary is currently under the control of an administrator appointed by  
 8 a court in the United Kingdom. (*Id.* at 3.) Pursuant to this Court’s order, the Receiver sold Defendant  
 9 Comair Rotron’s 100 percent stake in Shanghai Comair Cooling Fan, Co, to an affiliate of WET  
 10 enterprises (“WET”). (*See* Order re: Receiver’s Second Report, December 3, 2008, Doc. 61, at 2.)

11 During the time frame of the Sixth Report, the receivership proceedings have progressed to the  
 12 point where the receivership estate is no longer conducting business operations. (Pet. Ex. A, ¶1.)  
 13 With limited exceptions, all of the receivership assets have been liquidated. (*Id.*) A claim involving  
 14 the landlords of the Mexican Subsidiary was settled and the settlement was consummated. (Pet., ¶ 3.)  
 15 The Receiver indicates that the only remaining tasks are the pursuit of an inter-company account  
 16 receivable from the UK Subsidiary, the allocation of assets and expenses as between Plaintiff’s  
 17 collateral and non-collateral, and the disposition of a claim against an individual named Gary Kuzmin  
 18 that is currently in arbitration. These are discussed below.

19 The Receiver further reports that he has paid all of the receivership’s operating expenses when  
 20 due. (Pet. Ex. A, ¶2.) In addition, and pursuant to Court Order, the Receiver has paid all professional  
 21 fees incurred in connection with the receivership. (*Id.*) Finally, the Receiver has not remitted excess  
 22 proceeds to the Plaintiff from the liquidation of assets which are subject to its security interest because  
 23 the Receiver has not received any excess proceeds during the period of the Sixth Report. (*Id.* at ¶3)

## 24 2. *Defendants’ Financial Condition*

25 As of September 30, 2009, Defendants have a cash balance of \$866,595.63. (Pet., Ex. B, at  
 26 17.) Setting aside the UK inter-company account receivable, Defendants’ net accounts receivable is  
 27 \$ 0. (*Id.* at 18) Defendants no longer have any inventories of finished goods and raw materials and  
 28 components, as they have either been delivered to customers or sold at public auction. (*Id.*) The Sixth

1 Report also details Defendants' receipts and disbursements (Pet. Ex. C), as well as Defendants'  
2 creditors, addresses, and claimed amounts (Pet. Ex. D).

3       3.       *Receiver's Petition for Instructions*

4       The Receiver requests that the Receivership be continued through April 30, 2010, for several  
5 reasons. (Pet., at 4.) First, the Receiver is monitoring proceedings in the UK over an inter-company  
6 account receivable which the Receiver believes will have substantial value of the receivership. (*Id.*  
7 at ¶1) The UK Subsidiary is currently "in administration" in the United Kingdom, which is similar  
8 to a receivership. (*Id.*) The Receiver submitted a claim for \$2,094,879. (*Id.*) The UK administrator  
9 has acknowledged receipt of the claim and indicates the anticipated dividend is between 60 and 70  
10 cents on the dollar. (*Id.*) Thus, the claim has an expected value between \$1,256,000 and \$1,466,000.  
11 (*Id.*)

12       Second, the Receiver must conclude an allocation of the sale of assets that were not Plaintiff's  
13 collateral and expenses attendant to such sale. (Pet., ¶3.) The Receiver has begun negotiations with  
14 Plaintiff's counsel to that end. Any agreement would require Court approval. Moreover, to the extent  
15 the Receiver is holding proceeds which are not collateral of the Plaintiff, the Receiver would have to  
16 distribute such proceeds to Defendants' unsecured creditors. (*Id.*) The Receiver anticipates that he  
17 will present plans for the solicitation of unsecured creditors' claims and distribution of proceeds to all  
18 valid claims to the Court for its approval in the future. (*Id.*)

19       Third, the Receiver reports that the receivership estate may have a claim against Mr. Kuzmin  
20 for nearly \$200,000. (Pet., ¶5.) The claim concerns Mr. Kuzmin's contractual obligation to pay  
21 Defendants' reasonable attorney fees arising out of pre-receivership litigation against Defendants in  
22 a federal district court in Texas, which was subsequently ordered to arbitration. (*Id.*) The claim is  
23 currently handled by Defendants' pre-receivership counsel at no expense to the receivership estate.

24       For these reasons, IT IS HEREBY ORDERED:

25       1.       The receivership shall continue through the date upon which this Court makes a further  
26 order with respect to the Receiver's Seventh Report and Petition for Instructions; and

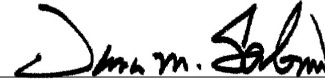
27       2.       Pursuant to Civ. L. R. 66.1, the Receiver shall file and serve his Seventh Report and  
28 Petition no later than ***April 12, 2010***. Comments or objections shall be filed no later than ***April 19,***

1 **2010.** The matter shall be calendared for Friday, *April 23, 2010 at 1:30 p.m.*

2 The Receiver shall notify interested parties of the Court's decision.

3 **IT IS SO ORDERED.**

4 DATED: November 18, 2009



HON. DANA M. SABRAW  
United States District Judge

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